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The State Historic Preservation Office Role
In Federal Regulations**

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ABSTRACT

With the 1992 amendments to the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act federal agencies and the State Historic Preservation Office are required to consult with Native American groups. Previously tribal consultation was often limited to a letter of notification sent to the respective tribal councils. Now spiritual leaders, nongovernmental groups, and interested tribal members play a more important role. Increasingly State Historic Preservation Offices (SHPOs) serve as clearinghouses or contact points to link federal agencies to these diverse interest groups. As such, the SHPOs find themselves caught in the middle, not only between the federal agency and the tribe, but also between traditional spiritual leaders and the tribal council. Examples of such challenges and possible solutions to the problem are explored in this paper

Keywords: *preservation legislation, Tribal Historic Preservation Office, State Historic Preservation Office, consultation, traditional cultural property.*

"Who the hell are you to tell us what to do on our own reservation?" I was asked this rather hostile-sounding question by a puzzled member of the Standing Rock Sioux Tribe. The State Historic Preservation Office (SHPO) had just finished a meeting with the Standing Rock Sioux tribal council over the location of a proposed casino, which the developer wanted to construct adjacent to a sacred site. Because construction was to be on federal land, the Bureau of Indian Affairs was required under the National Historic Preservation Act to consult with the SHPO. Perhaps the bureaucrats in the meeting understood why the SHPO staff was on the reservation talking about federal regulations, but to the general public standing around the edges of the room waiting to express their opinions, our involvement was a mystery and an imposition.

Why were we there? I know there were many tense moments during that meeting when I wished I were anywhere else on the planet. We were there because the National Historic Preservation Act has, in many ways, deposited the SHPO in the middle of consultation among the responsible federal agency, tribes, interested parties, local governmental offi-

cials, and the Advisory Council on Historic Preservation. We are the middlemen and often the scapegoat.

THE ROLE OF THE SHPO

The State Historic Preservation Officer, who oversees the SHPO staff, is appointed by the governor of each state. As a gubernatorial appointee, a SHPO has no job security and can face a lot of political pressure. No job qualifications are required for the head preservationist. For instance, in the early 1980s in North Dakota, Governor Allen Olson appointed a traveling Munsingware salesman to serve as the SHPO. Coordination was a problem because he lived in a city 200 miles away from the SHPO office and staff. Our current SHPO is a professional archeologist, but such credentials or expertise are not required by federal regulations. However, the office staff must be qualified in the fields of archeology, history, architectural history, and historical architecture (National Park Service n.d.).

The role of the SHPO is to serve as a central repository of preservation information and to pro-

vide local cultural resource expertise to federal agencies. In compliance with the National Historic Preservation Act, federal agencies are required to consult with the SHPO if a project is on federal lands or if it is federally funded or licensed. The purpose of the consultation is to identify cultural resources, evaluate those resources, and assess the effects of the project on resources eligible for nomination to the National Register of Historic Places. We also assist in planning damage mitigation on projects that cannot avoid damaging significant properties.

With the 1992 amendments to the National Historic Preservation Act and the passage of the Native American Graves Protection and Repatriation Act, federal agencies and the SHPO are required to include tribal governments and Native American groups in the consultation process. Previously tribal consultation was often limited to a letter of notification sent to the respective tribal council. Now spiritual leaders, non-governmental groups, and interested tribal members play a more important role. Increasingly State Historic Preservation Offices serve as clearinghouses or contact points to link federal agencies to these diverse interest groups.

While the SHPO staff are accustomed to preservationist roles, we are new to the intricacies of tribal politics. In the case of the Standing Rock casino, we faced the challenge of a tribe divided between a pro-economic development faction that supported construction of a casino at the location preferred by the developer, and a traditionalist faction determined to protect a sacred area on the reservation from desecration. In this case there was no clear "tribal" position. Individual tribal members expressed definite opinions pro or con, but there was no official position. All the SHPO staff could do was explain federal regulations and guidelines and wait for the controversy to be resolved. Ultimately construction of the casino began at a new location removed from the sacred area but without consultation with the SHPO, as required by the National Historic Preservation Act.

Another example of the challenges faced in coordination was a gas pipeline project at Fort Berthold. The pipeline company constructing the project "piecemealed" consultation. They notified

each of the federal land managers of the little piece of the project on their lands. Initially, the company did not give any federal agency a complete map of the project and no federal agency requested such a map. As a result, the U.S. Forest Service and the Three Affiliated Tribes Tribal Council approved the project without realizing that the pipeline crossed a sacred area on private land located off the reservation,

The sacred area is the origin place of the Low Cap (Apukawiku) clan of Hidatsa (Bowers 1965:65, 361). When SHPO staff learned of the project, we requested a map showing the complete pipeline corridor. As soon as we determined that the project crossed the sacred area, we notified the Low Cap clan, Three Affiliated Tribes, Bureau of Indian Affairs, U.S. Forest Service, pipeline company, and North Dakota Public Service Commission. Unfortunately, the pipeline company had already installed the pipe in the sacred area and had excavated a garbage pit at the place the patrons wait during vision quests. After a meeting on the reservation with the tribal council, pipeline company, clan, federal and state agencies, a compromise was worked out to hire clan members to restore the damaged patron area and restrict access to the area during vision quests.

As in most compromises, this was not a perfect solution. Hard feelings were expressed inside and outside of meetings. At one point I was offered a bribe by the pipeline company to facilitate the project and on another occasion the health of myself and my family was threatened. No one was completely happy with the solution. A number of comments were made that the SHPO staff once again got in the way of an important project that needed a quick response, not red tape.

Human remains are always a source of tension. Inclusion of a site containing graves automatically elevates a federal undertaking to an "adverse effect" on an historic property. When human remains or burial goods are found in an archeological site, the Advisory Council on Historic Preservation and the living relatives of the deceased, if known, are included in consultation by the federal agency. If the actual descendants are unknown, the tribal group most likely to be affiliated is consulted. In North Dakota, the

tribal Reinterment Committee, which represents all tribes in the state, is included in consultation by the SHPO.

The Bees Nest Site (32ME175) is a large, multiple component tipi ring, rock cairn, and rock alignment site within a coal mine permit area. The entire permit area was surveyed for cultural resources by qualified archeologists and historians (Peterson and Brownell 1989). During the identification phase of the project, a spiritual leader from the Three Affiliated Tribes notified the SHPO that human remains were buried in two large rock cairns at the Bees Nest Site. The SHPO in turn notified the coal company, Public Service Commission, Office of Surface Mining, Bureau of Land Management, Three Affiliated Tribes, and the Advisory Council on Historic Preservation that human remains were reported within the site.

The coal company was reluctant to exclude the rock cairns from mining without proof that human remains were present. All parties were notified of a plan to test the rock cairns. The excavations were conducted under the supervision of a qualified archeologist and the spiritual leader who had notified the SHPO of the problem. When human remains were discovered, the test excavation ceased. The remains were left in place and all cultural materials were returned to the burial cairn without study (Spath 1991a and 1991b).

As a result of the test excavation, the coal company proposed to exclude the burial cairns, rock alignments, and a majority of the Bees Nest Site from mining. The coal company requested permission to mine the outer edges of the site after archeological mitigation. The spiritual leader objected to issuance of the mine permit and requested that all of the site and surrounding geological formations be preserved. He strongly felt that the burial site was sacred and needed to be preserved in its natural setting.

After a meeting of all concerned parties, a memorandum of agreement was prepared that essentially granted the coal company's proposal. All parties, including the Three Affiliated Tribes tribal council, signed the memorandum of agreement. The spiritual leader was unhappy with the agreement and blamed the SHPO for allowing the burials to be tested in the first place and for agreeing that parts

of the site could be mined after archeological excavation.

In two of the three cases sacred areas, not archeological resources, were the properties endangered by development. The questions raised by these situations were: 1) what are the boundaries of a sacred area, 2) how do you ultimately protect a secret location, 3) who determines whether an area is sacred, and 4) how do you mitigate damage to such places?

Defining the boundaries of a sacred area and determining whether an area is sacred are questions tackled by *National Register Bulletin 38* (Parker and Ring n.d.). This document provides guidelines for evaluating and documenting "Traditional Cultural Properties." A traditional cultural property eligible for nomination to the National Register is one associated "with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community" (Parker and Ring n.d.: 1).

While *Bulletin 38* offers a number of scenarios and suggestions, it provides no hard and fast rules. Consistently the guidelines always return to the central theme of needing studies by trained ethnographers, ethnohistorians, sociologists, folklorists, or cultural anthropologists to work with the members of the living community to answer questions about traditional cultural properties. Unfortunately, the SHPO is not required to hire staff with these qualifications and few federal agencies employ such specialists. Contracting for such studies is relatively new. With the exception of cultural anthropologists, few of these professions are accustomed to cultural resource management work and the associated regulations and guidelines.

PROPOSED SOLUTIONS

Federal agencies and the SHPO offices are ill-equipped to deal with the changes in federal laws that require increased tribal participation. To date, regulations that implement the changes have not been finalized or are so new that no one is quite sure how to comply with them. A number of changes would greatly alleviate the situation.

First, State Historic Preservation Offices should receive the funding and be required to

include on their staff a qualified cultural anthropologist, or similar specialist, to assist federal agencies in complying with identification, evaluation, and nomination of traditional cultural properties. This technical expertise is greatly needed in complying with the National Historic Preservation Act.

Both federal agencies and SHPO offices should hire a tribal liaison to establish contacts with Native American groups. Tribal councils generally do not respond to a written notification of a project. A tribal liaison could attend tribal council meetings, work with activists, and establish a rapport with traditionalists who are reluctant to speak at public meetings on sensitive subjects. The liaison could provide guidance to all parties regarding tribal politics and help find acceptable compromises in controversial projects.

The National Historic Preservation Act allows an Indian tribe to assume the role of the State Historic Preservation Officer with respect to projects on its lands if the tribe has established formal procedures relating to historic preservation. Assumption of the SHPO role is allowed if the tribe requests the responsibility to create a Tribal Historic Preservation Office, the SHPO agrees, and the Advisory Council finds that the procedures meet the purpose of the regulations. In North Dakota the SHPO has encouraged tribes to take this step. If more tribes established their own historic preservation programs, the SHPO work load would decrease and tribes could make essential decisions about cultural resources on their own reservations.

The current situation places the SHPO on the political hot seat where we can ill afford to be. Especially when sacred sites or human remains are included in a case, the appropriate tribe needs to

assume a more effective and active role. While the SHPO needs improved expertise to link appropriate parties together and facilitate dialogue for off-reservation projects, on the reservation we must get out of the middle. We are a state entity, after all, and in many ways this is a sovereignty issue.

It is time to put aside the frustrations and hurts of repatriation and move forward to a future in which Native Americans and cultural resource managers work together as partners in preservation of the cultural heritage of all people.

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